



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

TOWN OF DURHAM

Petitioner

v.

DURHAM PROFESSIONAL FIREFIGHTERS
ASSOCIATION, LOCAL 2253, IAFF

Respondent

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CASE NO. U-0612-8

DECISION NO. 2001-135

PRE-HEARING CONFERENCE MEMORANDUM AND ORDER

BACKGROUND

The Town of Durham (Complainant) filed unfair labor practice charges on October 5, 2001 pursuant to RSA 273-A:5 II (d), (f), and (g) alleging that the Durham Professional Firefighters Association, Local 2253, IAFF, AFL-CIO (Respondent) breached the Collective Bargaining Agreement (CBA) by allegedly attempting to arbitrate a non-arbitrable action affecting an employee claimed by the Town to have probationary status. The Town of Durham alleges that the Union does not have representative rights over the subject employee under the provisions of RSA 273-A:1 IX (d) defining "probationary" and under the provisions of the parties' Collective Bargaining Agreement (CBA). The Association entered what may be characterized as a general denial and raises several affirmative defenses including laches, past practice bar, failure to state a claim and, in the alternative, that the existing CBA does not apply to "limited tenure employees". Neither party requests any specific relief in their pleadings.

The matter was initially scheduled for a pre-hearing conference to be conducted on November 28, 2001. Upon receipt of an "Assented to Motion to Continue" filed by the Association on October 31, 2001, the matter was rescheduled to December 19, 2001 by agreement.

PARTICIPATING REPRESENTATIVES

For the Complainant: J. Joseph McKittrick, Esquire

For the Respondent: John S. Krupski, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

1. Is Firefighter Brown a probationary employee under the provisions of RSA 273-A:1 IX (d)?
2. Can a public employer and an exclusive bargaining representative negotiate or otherwise modify the statutory definition of the term "probationary" as it appears in RSA 273-A:1 IX (d) for purposes of establishing rights or obligations under their own collective bargaining agreement?
3. Is Firefighter James Brown entitled to coverage under the parties' present Collective Bargaining Agreement?
4. Did the Union's action in filing for arbitration constitute an unfair labor practice?

WITNESSES

For the Complainant:

1. Ronald P. O'Keefe, Fire Chief

For the Respondent:

1. Ronald P. O'Keefe, Fire Chief
2. Jeffrey Furlong, Firefighter
3. Glenn Miller, Firefighter
4. Brian Murray, Firefighter
5. Jeffrey Brown, Firefighter

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibit

1. Current Collective Bargaining Agreement

For the Complainant:

1. Grievance Documentation re: Firefighter James Brown
2. Original Certification of Durham Professional Firefighters' Association issued by the PELRB

For the Respondent:

1. Collective Bargaining Agreement, 1/95-12/97
2. Collective Bargaining Agreement, dated 1/92-12/94
3. Collective Bargaining Agreement, dated 1/89-1/91
4. Payroll records (to be specified by counsel and appropriate releases obtained)
5. Current Collective Bargaining Agreement for Police Officers
6. Current Collective Bargaining Agreement for Public Works
7. Current Collective Bargaining Agreement for Municipal Managers (mid-level)
8. Current Town Personnel Plan
9. Selected contents of Firefighter Miller's Personnel File (to be specified by counsel)
10. Firefighter Probationary Information Packet, revised 2000
11. Seniority roster
12. Certain completed Personnel Action request forms (to be specified by counsel)
13. Letter from Larry Best to Assistant Chief, dated November 2000
14. Letter from Larry Best to Chief, dated November 14, 2001
15. Durham Firefighters' Information Package, revised 5/93
16. Letter from Larry Best to Chief, dated September 7, 1999
17. Letter from Chief O'Keefe to Larry Best, dated September 9, 1999
18. Overtime detail document (to be compiled and provided to opposing counsel)
19. Sick Leave Bank Package
20. Sick Leave Bank Administrative Rules
21. Grievance Documents of Firefighter Murray regarding grievance on or about 12/24/91
22. Shift Assignments sheet

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be

understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

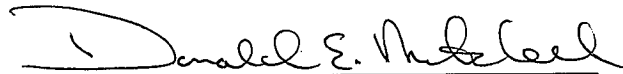
The time being set aside for this hearing is one day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than February 15, 2002

DECISION

1. The parties shall exchange any outstanding documents reasonably requested by opposing counsel no later than February 12, 2002. In the event that either party has a good faith belief that he has not received any such document, he shall immediately inform the PELRB, in writing, identifying the document requested, the date of the request, and the purpose for which the document is sought. A copy of that notice shall also be provided to opposing counsel who shall upon receipt provide the document or inform the PELRB in writing for his reasons for not providing the document to the requesting party.
2. On or before February 26, 2002 the Town shall file its Motion to Suppress the admittance of certain documents planned as exhibits by the Association.
3. Because of the large number of potential exhibits, the party representatives shall meet and confer on or before February 20, 2002 to discuss the numerous exhibits planned for introduction at hearing, and to arrange to pre-mark any exhibits, for identification, prior to the time of hearing and arrange to have sufficient copies of all exhibits available for distribution at the hearing, as required by Pub 203.02. It is understood that exhibits that are to be used solely for purposes of impeachment may not be jointly marked.
4. On or before March 7, 2002 the Association shall file any Objection to the Town's Motion to Suppress.
5. The party representatives shall forward any final amendments of their Witness and Exhibit lists detailed above to the opposing representative or counsel and to the PELRB no later than March 7, 2002.
6. Any additional preliminary, procedural or dispositive motions shall be filed by the parties no later than fourteen (14) calendar days prior to the scheduled hearing date.

7. Unless otherwise ordered as a result of the filing of any subsequent motion, an evidentiary hearing between the parties is scheduled to be conducted at the Office of the Public Employee Labor Relations Board on Tuesday, March 12, 2002 beginning at 9:30 A.M. Counsel shall be prepared at the outset of the hearing to present brief oral arguments in support of their respective positions on the Town's Motion to Suppress.

Signed this 20th day of December, 2001

A handwritten signature in cursive script, reading "Donald E. Mitchell", written over a horizontal line.

Donald E. Mitchell, Esq.
Hearings Officer